July 27, 2011

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The Honorable Shaun Donovan
Secretary
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Regulations Division, Room 10276
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RE: Credit Risk Retention Proposed Rule
OCC: Docket No. OCC–2011–0002
FRB: Docket No. R–1411
FDIC: RIN 3064–AD74
SEC: File Number S7–14–11
FHFA: RIN 2590–AA43
HUD: Docket No. FR–5504–P–01

Dear Sir or Madam:

The American Credit Union Mortgage Association (ACUMA) appreciates the opportunity to provide comments on the proposed rule issued by the Office of the Comptroller of the Currency, Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, and other agencies (the Agencies), regarding credit risk retention for issuers of asset-backed securities. Section 941 of the Dodd-

Frank Wall Street Reform and Consumer Protection Act (the Act) requires the Agencies to prescribe regulations to require a securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. The regulations must require the retention of at least 5% of the credit risk for assets other than those subject to an exemption or exception (such as for qualified residential mortgages, or QRMs). The Agencies published their proposed Credit Risk Retention regulations (the Proposed Rule) on April 29, 2011.

ACUMA

ACUMA is an organization of and for credit unions, dedicated to the simple principle that credit unions have both an obligation and a competitive need to become a premier provider of home loans for their membership. ACUMA's over 250 members are federal and state chartered credit unions around the country offering mortgage financing, as well as other financial services, to their customers. Many of our members are small financial institutions that are important participants in their communities – they know their customers, and seek to fulfill their customers' financial services needs at a local level, with sound underwriting and affordable credit options to address those needs.

It nearly goes without saying that credit unions largely avoided the melt-down of the subprime mortgage market. To the contrary, ACUMA's members have remained available to their communities by placing top priority on providing mortgage loans with terms and conditions that their borrowers can repay. In fact, in spite of all the market turmoil and the continuing stalemate in the housing finance markets, credit unions are responsible for approximately 5.5% of mortgage originations in the United States, with their market share nearly doubling since 2008 and continuing to grow.

Additionally, through the duration of the subprime crisis and its fragile attempts at recovery, from 2007 through the first quarter of 2011, credit union charge-off rates for first-lien mortgages remained generally flat at less than one-third of the charge-off rates for FDIC-insured banks.[1] Similarly, 60-day delinquency rates for credit union first-lien mortgages remained at nearly one-fourth of the levels for FDIC-insured banks during that time (even compared to the banks' 90-day delinquency rates).[2] Thus, credit unions generally did not participate in the originate-to-distribute model of mortgage lending, attractive to many in our industry, but rather have sought to provide solid mortgage options to their members.

ACUMA's mission is to be the resource for those credit unions seriously engaged in the business of home finance. As part of that mission, ACUMA keeps its members abreast of the

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[1] According to data analyzed by Callahan and Associates, Inc., credit unions' annualized net-charge off ratios for first mortgages went from 0.02% in the first quarter of 2007, to 0.40% in the first quarter of 2011. However, for FDIC-insured banks, that ratio went from 0.10% in the first quarter of 2007, to a peak of over 1.7% in 2010, and to 1.32% in the first quarter of 2011.

[2] Credit union first mortgage delinquency data (measuring 60-day delinquencies) indicate that in the first quarter of 2007 those rates were 0.33%, and they rose only to 2.23% over the course of the mortgage crisis. However, based again on analysis by Callahan and Associates, Inc., the first mortgage delinquencies of FDIC-insured banks (under a more lenient measurement of 90-day delinquencies) were approximately four times those levels, climbing from 1.13% in 2007 to a peak of just over 10% in 2010, and settling at 9.60% for the first quarter of 2011.

multitude of regulatory changes affecting residential mortgage lending. On behalf of those members, ACUMA provides this comment letter on the Agencies' Proposed Rule.

COMMENTS ON PROPOSED RULE

A. General

ACUMA generally supports the main purposes of the Proposed Rule – to require securitizers of certain types of assets to retain economic risk in the transaction, and thereby instill discipline and responsibility in the origination of those assets and regenerate the private securitization markets. However, ACUMA's members are very concerned that the Agencies' approach to defining the set of QRMs that will be exempt from the risk retention requirement is unduly restrictive, and would if adopted result in a significant constraint on the availability of mortgage loans for creditworthy families. The Act recognizes that there is an important balance to be struck between strict discipline in origination (which may lead to fewer defaults) and overly-burdensome restrictions that will threaten our fragile mortgage market recovery. However, the Proposed Rule focuses nearly exclusively on ensuring that QRMs are of "very high credit quality," without recognizing that creating the absolute narrowest exemption means that borrowers who nonetheless represent solid credit risks will be unable to obtain mortgage loan at affordable rates, and may be shut out of the market altogether.

In that vein, ACUMA supports the exemption provided under the Act for securitizations consisting of QRMs. However, the restrictive underwriting requirements that will result from this Proposed Rule go too far. While ACUMA's members (like many community-based financial institutions) have taken and will continue to take a disciplined and responsible approach to underwriting and originating solid residential mortgage loans, the Proposed Rule would significantly impair their ability to provide affordable mortgage loan options to their members.

B. LTV and DTI Requirements Will Unduly Restrict Mortgage Credit for Worthy Borrowers

The Proposed Rule's requirement that only loans with a loan-to-value ratio of 80% may be considered a QRM (and thus exempt from the risk retention requirement), without regard to mortgage insurance that may protect the lender from default, will put mortgage loans (at least at anything resembling affordable rates) out of reach for many Americans. While the Agencies assert that borrowers who have invested less than a 20% down payment, and do not also have cash to close, are more likely to default, ACUMA and its members can relate countless instances in which a full analysis of a family's financial circumstances indicates that the family can successfully repay a mortgage loan with a much more manageable down payment (e.g., 10%, or 5%), along with the support of strong, expert underwriting and of mortgage insurance. Similarly, many families that would not have met the Proposed Rule's strict debt-to-income (DTI) ratios of 28% (front-end) and 36% (back-end) are performing well on their mortgage commitments.

As mentioned above, credit unions (and many of their mortgage borrowers) emerged from the subprime mortgage crisis relatively unscathed, compared to many of their mortgage lending competitors. The reason they survived is that they maintained their dedication to their members and their communities, and to originating good mortgage loans that they reasonably determined their borrowers had the capacity and willingness to repay. Many of those loans did not require their borrowers to place an ungainly 20% down payment (plus bring cash for closing costs), or insist on strict DTI ratios while ignoring other positive repayment indicators. In fact,

statistics indicate that only a small percentage of conforming mortgage loans would meet those QRM requirements, even in the 2009 and 2010 vintage when mortgage credit was historically tight. Instead, those borrowers presented other compensating underwriting factors and have performed successfully under their loans.

Our members have expressed serious concern that restricting QRMs to those loans with a 20% down payment and a 28%/36% DTI ratio will force those good borrowers out of the mortgage market (and thus the home ownership market) for years to come. It would take many families anywhere from 7 to 15 years, or even as many as 18 years in some high-priced markets, to save for such a down payment, while many of them could instead be making their monthly mortgage payments during much of that time. For those borrowers who nonetheless try to obtain a mortgage loan with a lower down payment, it is unclear whether non-QRM loans will even be available, and they certainly will be significantly more expensive. Similarly, requiring 75% combined LTV for refinancings (and 70% for cash-out refinancings) may prevent many homeowners – particularly those in areas where housing values have slumped – from refinancing into a more beneficial loan.

Thus, although the Agencies may be correct that requiring such a hefty down payment and such low DTIs may prevent a certain number of defaults, those requirements for QRMs go too far, tipping the balance against ensuring that affordable mortgage loans are available for borrowers. Other factors of the QRM – such as ensuring that underwriters verify and document borrowers' income and assets, and excluding loans with risky features such as balloons, negative amortization or interest-only payments – will have a larger effect on default rates, with a more modest effect on the availability of credit.

The Agencies should reconsider their overly restrictive approach. They should recognize the benefits of allowing borrowers to supplement their down payment through the purchase of mortgage insurance. The presence of that insurance will instill confidence in the securitization markets without forcing many good borrowers either to pay substantially more for their mortgage loans, or to save for 10 years or more before being able to obtain a lower priced loan. In addition, the Agencies should recognize that simply by defining QRM to exclude risky loan products and to require underwriting documentation and verification, they are significantly instilling origination discipline, lowering default risks, and facilitating the mortgage securitization markets. To the extent the Agencies rely on black-and-white ratios or formulas, they should establish a mechanism for updating those numbers in the future to reflect changes in the economic or legal landscape.

C. Servicing Standards are Misplaced

In spite of the fact that the risk retention rule and QRM definition are intended to align incentives for originators and securitizers of mortgage loans, through the consideration of loan product features and underwriting practices that lead to default, the Proposed Rule would require originators of QRMs to commit in the loan documents to certain loss mitigation policies and procedures in the event of default. Specifically, the Proposed Rule would require that a QRM lender must include terms in the mortgage documents under which it commits to having a set of servicing policies and procedures as specified in the Rule. Those policies and procedures would require the lender to take loss mitigation actions, such as loan modification or other loss mitigation alternatives, if the estimated resulting net present value of such action exceeds the estimated net present value of recovery through foreclosure. The policies and procedures also would commit the lender to initiate loss mitigation activities within 90 days after the mortgage loan becomes delinquent. In addition, the creditor would essentially have to

commit not to sell, transfer or assign servicing rights for the mortgage loan unless the agreement requires the new servicer to abide by the creditor's default mitigation commitments. The creditor would be required to disclose all these commitments to the borrower at or prior to the closing of the mortgage transaction. The Agencies state that timely initiation of loss mitigation activities often reduces the risk of subsequent default on mortgages backing the securitization transaction.

ACUMA members recognize the importance of quick loss mitigation efforts, and that foreclosure is rarely in anyone's best interests. Setting the housing finance economy back on its feet requires a multifaceted approach, and efforts to instill more responsible servicing practices by some servicers may certainly be needed. However, these servicing related requirements are truly misplaced. As the Act indicates, the Agencies are tasked with imposing risk retention requirements upon securitizers, and with determining which residential mortgage loan underwriting criteria and product features may justify an exemption from those requirements based on low risk of default. The Act does not require, suggest that, or even intend for the Agencies to impose upon the originator commitments to the borrower regarding certain loan modification timelines after a default has occurred, or restrictions on the transfer of servicing rights. Those servicing practices are far removed from the purposes of the Proposed Rule, which are to align economic interests in the mortgage securitization markets and to instill discipline in underwriting mortgage loans. Further, forcing a creditor to commit to the borrower to undertake certain loss mitigation efforts, in the event the borrower fails to comply with his or her obligations under the loan, seems to create an obvious moral hazard. ACUMA supports the regulators' efforts to establish servicing guidelines separate from this rulemaking, but strongly objects to the Agencies' efforts to fold these standards into the loan documents for a QRM for purposes of risk retention.

CONCLUSION

As stated clearly in the Act, in connection with residential mortgage loans, the purposes of the risk retention requirement, and the QRM exemption from that requirement, are to encourage appropriate risk management practices by the originators and securitizers of those loans, to help ensure high quality underwriting standards for them, and to improve the access to mortgage credit on reasonable terms. The Act intended for the Agencies to shape the QRM exemption by considering shoddy underwriting practices and risky product features that have historically resulted in default. The Act also required the Agencies to consider, however, that having zero defaults is not the Rule's goal – drawing the boundaries around QRMs too restrictively will have an undue effect on the affordability and availability of mortgage loans for creditworthy borrowers.

ACUMA members believe that the Proposed Rule has taken the wrong approach to drawing those boundaries. The LTV and DTI requirements are so restrictive that many borrowers who are solid credit risks will not be able to obtain a mortgage loan, at least not at reasonable rates. In fact, under current conditions with the tightest credit markets in our lifetimes, most mortgage loans being originated would not qualify for the QRM restrictions. While the Act and the Proposed Rule are intended to reinvigorate a healthy mortgage market, the Agencies' QRM proposal would do just the opposite.

Thus, ACUMA respectfully insists that the Agencies reconsider their approach to defining QRMs. They should rethink their proposal to set incredibly onerous, black-and-white LTV and DTI ratios, and recognize that loans with lower down payments (along with mortgage insurance, as appropriate) are part of a solid and disciplined underwriting approach and will

support the proper alignment of origination incentives. Further, the Agencies should remove the portion of the Proposed Rule addressing servicing practices. Those provisions do not relate to the goals behind risk retention, and while perhaps meritorious, have no place in this rulemaking.

ACUMA appreciates the considerable thought and effort the Agencies employed in developing the Proposed Rule, as well as the extension of the deadline to submit comments.

Sincerely,

John C. Reed
Chairman
American Credit Union Mortgage Association